

 **COPY**

WHEN RECORDED RETURN TO:  
LANDAMERICA COMMERCIAL SERVICES  
140 EAST WASHINGTON ST.  
INDIANAPOLIS, IN. 46204  
CASE NO. 07-002321

**26 FILED**

OCT 20 2008

*Bellevue*

2008-0121271  
RECEIVED FOR RECORD

2008 OCT 20 PM 4:03

JULIE L. VOORHIES  
MARION COUNTY RECORDER

**POST CLOSING ACCESS AGREEMENT**

This Post-Closing Access Agreement ("**Agreement**") is being entered into as of this 15<sup>th</sup> day of October, 2008 by and among AIMCO Michigan Apartments, LLC, a Delaware limited liability company (the "**Seller**"), AIMCO Michigan Meadows Holdings, L.L.C., a Delaware limited liability company ("**Seller's Affiliate**"), and GENNX Properties VI, LLC ("**GENNX VI**"), an Indiana limited liability company, and GENNX Properties VII, LLC ("**GENNX VII**"), an Indiana limited liability company (GENNX VI and GENNX VII are referred to collectively herein as the "**Purchaser**").

WHEREAS, Seller is the successor-in-interest to Seller's Affiliate in the ownership of real estate located at 3800 West Michigan Street and at 3801-3823 West Michigan Street, Indianapolis, Indiana, more particularly described in the attached **Exhibit A** and made a part hereof (the "**AIMCO Property**");

WHEREAS, Seller is the successor-in-interest to Seller's Affiliate with respect to certain rights and obligations provided under that certain Access Agreement between Seller's Affiliate and Genuine Parts Company ("**Genuine**") dated January 4, 2002 (the "**Genuine Access Agreement**"), and providing generally for access to the AIMCO Property by Genuine, its agents, employees, contractors and subcontractors, for the purpose of investigating certain groundwater contamination beneath the AIMCO Property;

WHEREAS, Seller is the successor-in-interest to Seller's Affiliate with respect to certain rights and obligations provided pursuant to that certain Genuine Settlement Agreement, Indemnification and Mutual Release ("**Genuine Settlement Agreement**") between Seller's Affiliate and Genuine dated October 31, 2006, and providing generally for the voluntary remediation by Genuine and by Seller's Affiliate of contamination of and beneath the AIMCO Property, and for the cross-indemnification of Seller's Affiliate and Genuine in accordance with the terms of the Genuine Settlement Agreement;

WHEREAS, pursuant to the terms of those certain Purchase and Sale Contracts each dated as of the 10<sup>th</sup> day of October, 2008, by and among Seller and GENNX VI and Seller and GENNX VII, respectively (hereinafter, the "**Purchase Contracts**"), at such time as Purchaser acquires the respective properties, Purchaser shall be entitled to any rights and obligations under the Genuine Settlement Agreement that run with the land and any rights and obligations under the Genuine Settlement Agreement that Purchaser is entitled to by virtue of being an "Owner", as that term is defined under the Genuine Settlement Agreement;

WHEREAS, Seller's Affiliate has entered into that certain Voluntary Remediation Agreement ("**VRA**") with the Indiana Department of Environmental Management ("**IDEM**") providing for Seller's Affiliate's remediation of environmental contamination on the AIMCO

Michigan Apartments and Plaza  
(PS # 040891 and 040892) Indianapolis, IN  
Post-Closing Access Agreement

Property in accordance with that certain remediation work plan ("**RWP**") which is not yet in final form and which remains subject to the final approval of IDEM;

WHEREAS, Seller's Affiliate has initiated investigative, remediation and monitoring activities on the AIMCO Property in accordance with the Genuine Settlement Agreement, the VRA and the proposed RWP;

WHEREAS, Purchaser acknowledges that the AIMCO Property is subject to certain deed restrictions, the Genuine Access Agreement and the Genuine Settlement Agreement; and

WHEREAS, Purchaser desires to provide access to the AIMCO Property to Seller and Seller's Affiliate and their respective agents, employees, contractors and subcontractors, in order that they may test, investigate, remediate, and monitor the AIMCO Property (collectively, the "**Remediation**") as necessary in order to comply with the terms and conditions of the VRA and the RWP ultimately approved by IDEM (collectively, the "**Approved Remediation Plan**"), and the Genuine Settlement Agreement; and

WHEREAS, Purchaser is willing to allow Seller and Seller's Affiliate access to the AIMCO Property subject to the terms and conditions contained in this Agreement;

NOW THEREFORE, in consideration of the promises and covenants herein provided, Seller, Seller's Affiliate and Purchaser agree as follows:

1. Purchaser hereby grants a temporary license to Seller's Affiliate and Seller, their agents, employees, contractors and subcontractors, to enter upon the AIMCO Property for the purpose of completing the Remediation of the AIMCO Property pursuant to the Genuine Settlement Agreement and the Approved Remediation Plan.

2. Seller's Affiliate and Seller shall obtain IDEM's final approval of the RWP and shall implement the Approved Remediation Plan in accordance with its terms.

3. Seller and Seller's Affiliate shall each have the right to enter upon the AIMCO Property at any reasonable time, with 24 hour prior notice to Purchaser pursuant to Section 14 hereof, for the purpose of performing the Remediation in accordance with the Approved Remediation Plan and the Genuine Settlement Agreement. Neither Seller nor Seller's Affiliate, nor any of their agents, employees, contractors or subcontractors, shall enter into any occupied apartments or commercial spaces without 24 hour prior notice to Purchaser pursuant to Section 14 hereof, and the subsequent consent of any affected tenants. Purchaser hereby undertakes to utilize its best efforts to secure the consent of tenants upon request by Seller or Seller's Affiliate.

4. Seller and Seller's Affiliate and their respective agents, employees, contractors and subcontractors will take all reasonable precautions to minimize, and shall promptly repair, any damage that might occur to the AIMCO Property in connection with the Remediation.

5. Seller and Seller's Affiliate and their respective agents, employees, contractors and subcontractors will not unreasonably obstruct or interfere with Purchaser's access to and use of the AIMCO Property during the term of this Agreement and in connection with the Remediation, and all actions of Seller and Seller's Affiliate and their respective agents, employees, contractors and subcontractors in connection with the Remediation of the AIMCO Property will be carried out in a manner so as not to unreasonably interfere with Purchaser's or Purchaser's tenants' activities and/or business operations and the normal use of the AIMCO Property.

6. Upon completion of the Remediation, Seller and Seller's Affiliate, and their respective agents, employees, contractors and subcontractors will, except as otherwise required by law, properly close all borings and monitoring wells for which they are responsible in accordance with accepted industry practices and regulatory requirements, and will restore the AIMCO Property to substantially the same condition as existed at the time Seller and Seller's Affiliate began the Remediation.

7. In the event of a dispute between Seller and Seller's Affiliate, on the one hand, and Genuine, on the other, as to their respective responsibilities related to Remediation of the AIMCO Property, such dispute shall be resolved among those parties without any cost to Purchaser. In the event any action on the part of Purchaser, Seller or Seller's Affiliate is required to enforce any provision of this Agreement, the prevailing party in such enforcement action shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.

8. This Agreement shall be effective upon the Closing of the sale of the AIMCO Property to Purchaser, and shall continue in effect until the completion of the Remediation by Seller and Seller's Affiliate.

9. Seller and Seller's Affiliate jointly and severally hereby release and will protect, defend, indemnify and save harmless Purchaser and Purchaser's lender, The National Bank of Indianapolis ("Lender"), and their respective officers, directors, employees and agents against all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages, penalties and injury (including death) sustained by Purchaser or Lender, and/or their respective officers, directors, employees and agents, for injury to any person (including death) or damages to or loss or destruction of property of any kind resulting solely from the entry or presence of Seller or Seller's Affiliate, or their agents, employees, contractors or subcontractors on the AIMCO Property pursuant to the terms of this Agreement (collectively, "AIMCO Claims"). As a result of any such AIMCO Claims, Seller and Seller's Affiliate will assume at their own expense on behalf of Purchaser and Lender and their respective officers, directors,

employees and agents, the defense of any such AIMCO Claims which may be brought against said persons and pay on behalf of said persons the amount of any settlement agreed upon by Seller or Seller's Affiliate, judgments that may be entered, and any other amounts assessed in connection therewith, plus all reasonable costs and expenses involved as aforementioned.

10. Upon request by Purchaser, Seller and Seller's Affiliate agree to promptly provide Purchaser, and Purchaser's counsel, Robert M. Hamlett of Frank & Kraft, P.C., all laboratory sample results, reports, field logs and other reports or data reflecting analytical data, findings, conclusions, work plans, or work performed regarding the Remediation on or relating to the AIMCO Property.

11. All residuals, purge and development waters, soils and/or related residuals and debris shall be properly containerized immediately upon generation and shall be stored in accordance with the Approved Remediation Plan and removed from the AIMCO Property as quickly as reasonably practicable. Seller and Seller's Affiliate each agree that any such stored material shall be stored in compliance with all applicable laws and at the location(s) reasonably specified by Purchaser. To the extent required, the evaluation, transportation, storage and disposal of such residuals, and the costs associated with such residuals, shall be the responsibility of the party which generated the same.

12. At the request of Purchaser or any governmental authority with jurisdiction, Seller and Seller's Affiliate shall provide such party with split samples for independent analysis at such party's cost. Further, Purchaser or Purchaser's designated representatives shall have the right to observe all activities performed by Seller or Seller's Affiliate, and/or their respective agents, employees, contractors or subcontractors.

13. Seller and Seller's Affiliate shall each ensure that all necessary permits, utility markings, notifications, licenses or certification of their respective contractors or agents are secured and in force prior to execution of any work on the AIMCO Property.

14. Any notice required to be provided hereunder shall be provided to Robert M. Hamlett via facsimile transmission at (317) 684-6111.

15. Upon Purchaser's request, Seller and Seller's Affiliate shall provide Purchaser a copy of any and all IDEM approved revisions, amendments, modifications or other alterations to the Approved Remediation Plan.

16. Seller and Seller's Affiliate shall not conduct any Remediation activities beyond that required pursuant to the Approved Remediation Plan without the prior written consent of Purchaser. Notwithstanding the foregoing, if Seller or Seller's Affiliate is compelled by any governmental authority acting under any federal, state or local law, ordinance or regulation to undertake any Remediation of the AIMCO Property whether or not such remediation is beyond

the scope of the Approved Remediation Plan, Purchaser shall not deny Seller or Seller's Affiliate permission to access the AIMCO Property or to conduct the required Remediation. Purchaser hereby releases and will protect, defend, indemnify and save harmless Seller and Seller's Affiliate, and their respective officers, directors, employees and agents against all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages, penalties and injury (including death) sustained by Seller or Seller's Affiliate, or their respective officers, directors, employees and agents, for damages arising out of Purchaser's failure to provide reasonable access to the AIMCO Property in order to permit Seller or Seller's Affiliate to conduct the required Remediation as set forth above.

17. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns. Lender is an intended third party beneficiary of the terms and conditions of Section 9 of this Agreement.

18. This Agreement shall be interpreted, enforced and governed by the laws of the State of Indiana, and any claim related to this Agreement shall be brought only in a court of competent jurisdiction sitting in Marion County, Indiana.


19. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement.

*[Remainder of Page Intentionally Left Blank]*

**SELLER:**

**AIMCO MICHIGAN APARTMENTS, LLC,**  
a Delaware limited liability company

By: AIMCO/BETHESDA HOLDINGS, INC.,  
a Delaware corporation,  
its member

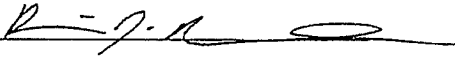
By:   
Name: Brian J. Somnorski  
Title: Vice President

**SELLER'S AFFILIATE:**

**AIMCO MICHIGAN MEADOWS HOLDINGS,  
L.L.C.,**  
a Delaware limited liability company

By: AIMCO PROPERTIES, L.P.,  
a Delaware limited partnership,  
its manager

By: AIMCO-GP, INC.,  
a Delaware corporation,  
its general partner

By:   
Name: Brian J. Somnorski  
Title: Vice President

[Purchaser's Signature Page Follows]

SELLER'S SIGNATURE PAGE

Michigan Apartments and Plaza  
(PS # 040891 and 92) Indianapolis, IN  
Post-Closing Access Agreement

4

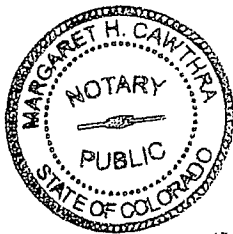
ACKNOWLEDGEMENT

STATE OF COLORADO )

CITY AND COUNTY OF DENVER )

Before me a Notary Public, this 13<sup>th</sup> day of October, 2008, personally appeared Brian J. Born, the Vice President of AIMCO/BETHESDA HOLDINGS, INC., a Delaware corporation, as member of AIMCO MICHIGAN APARTMENTS, LLC, a Delaware limited liability company, who acknowledged the execution of the foregoing Agreement for and on behalf of said Seller and who having been duly sworn, stated that the representations contained therein are true.

WITNESS my hand and seal.



My Commission Expires Sept 16 2009

Margaret H. Cawthra

Notary Public

Margaret H. Cawthra

Printed Signature

Resident of Jefferson County

My commission expires:

9/19/2009

This instrument was prepared by:

Philip A. Nicely, Esq.  
Bose McKinney & Evans LLP  
North Office  
301 Pennsylvania Parkway, Suite 300  
Indianapolis, IN 46280  
Telephone: (317) 684-5301  
Facsimile: (317) 223-0301

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Philip A. Nicely, Esq.

ACKNOWLEDGEMENT

STATE OF COLORADO )

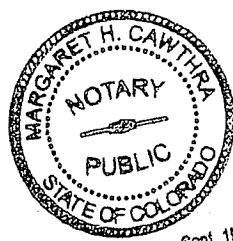
CITY AND COUNTY OF DENVER )

Before me a Notary Public, this 13<sup>th</sup> day of October, 2008, personally appeared Brian J. Bornhorst the Vice President of AIMCO-GP, INC., a Delaware corporation, as general partner of AIMCO PROPERTIES, L.P., a Delaware limited partnership, manager of AIMCO MICHIGAN MEADOWS HOLDINGS, L.L.C., a Delaware limited liability company, who acknowledged the execution of the foregoing Agreement for and on behalf of said Seller's Affiliate and who having been duly sworn, stated that the representations contained therein are true.

WITNESS my hand and seal.

Margaret H. Cawthra

Notary Public



Margaret H. Cawthra

Printed Signature

Resident of Jefferson County

My commission expires:

9/19/2009

*This instrument was prepared by:*

Philip A. Nicely, Esq.  
Bose McKinney & Evans LLP  
North Office  
301 Pennsylvania Parkway, Suite 300  
Indianapolis, IN 46280  
Telephone: (317) 684-5301  
Facsimile: (317) 223-0301

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Philip A. Nicely, Esq.



**PURCHASER:**

**GENNx PROPERTIES VI, LLC,**  
an Indiana limited liability company

By: DTA, LLC,  
an Indiana limited liability company,  
its Manager

By: Kevin Krulwich  
Name: KEVIN KRULWITCH  
Title: MANAGING MEMBER

**GENNx PROPERTIES VII, LLC,**  
an Indiana limited liability company

By: DTA, LLC  
an Indiana limited liability company,  
its Manager

By: Kevin Krulwich  
Name: KEVIN KRULWITCH  
Title: MANAGING MEMBER

STATE OF INDIANA )  
COUNTY OF MARION ) SS:

Before me, a Notary Public in and for said County and State, personally appeared Kevin Krulwich, Manager of DTA, LLC, an Indiana limited liability company, which is the Managing Member of GenNx Properties VI, LLC, an Indiana limited liability company, and of GenNx Properties VII, LLC, an Indiana limited liability company, who being duly sworn upon his oath, acknowledged his execution of the above and foregoing instrument as his voluntary act and deed for and on behalf of said limited liability company and for the uses and purposes contained therein.

Dated this 15 day of October, 2008.

County of Residence:

My Commission Expires:



PAULA J. SPALDING, Notary Public

Shelby County Resident

My Commission Expires: September 13, 2015

Paula J. Spalding, Notary Public

PURCHASER'S SIGNATURE PAGE

Michigan Apartments and Plaza  
(PS # 040891 and 92) Indianapolis, IN  
Post-Closing Access Agreement

*[INSERT NOTARY PAGES FOR BOTH PURCHASER'S]*

**EXHIBIT A**

**LEGAL DESCRIPTION FOR MICHIGAN MEADOWS APARTMENTS**

**Marion County, Indiana**

A part of the South Half of the Northwest Quarter of Section 5, Township 15 North, Range 3 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows, to-wit:

Beginning at the Northeast corner of said Half Quarter Section; thence South 01 degrees 53 minutes 21 seconds West (assumed bearing) on and along the East line of said Quarter Section 812.95 feet to the centerline of Michigan Street as established by previous deeds, said point being North 01 degrees 53 minutes 21 seconds East 735.11 feet from the Southeast corner of the Northwest Quarter of said Section; thence North 90 degrees 00 minutes 00 seconds West 416.71 feet to the Indianapolis Department of Transportation (I.D.O.T.) right-of-way as per project S.T. 23-001 "A" and recorded in Instrument Number 73-9410; thence North 02 degrees 07 minutes 40 seconds West with the right-of-way project S. T. 23-001 "A" 30.02 feet; thence North 84 degrees 21 minutes 42 seconds West 100.50 feet; thence South 89 degrees 55 minutes 40 seconds West 180.00 feet leaving the I.D.O.T. right-of-way per Instrument Number 73-9410 and continuing on I.D.O.T. right-of-way per Instrument Number 73-9408; thence North 50 degrees 23 minutes 09 seconds West 73.70 feet; thence North 02 degrees 07 minutes 40 seconds East 253.04 feet; thence North 03 degrees 16 minutes 25 seconds East 197.87 feet leaving I.D.O.T. right-of-way per Instrument Number 73-9408 and continuing on I.D.O.T. right-of-way per Instrument Number 73-9410; thence North 02 degrees 07 minutes 40 seconds East 40.00 feet; thence North 04 degrees 59 minutes 25 seconds East 120.15 feet; thence North 28 degrees 41 minutes 34 seconds East 44.72 feet; thence North 05 degrees 13 minutes 43 seconds West 78.61 feet to the North line of said Half Quarter Section; thence South 89 degrees 51 minutes 57 seconds East leaving I.D.O.T. right-of-way and on and along the North line of said Half Quarter Section 734.48 feet to the point of beginning.

EXCEPT that part conveyed to the Consolidated City of Indianapolis through its Department of Capital Asset Management by Warranty Deed recorded December 14, 1999, as Instrument No. 99-235232, described as follows:

Part of the South Half of the Northwest Quarter of Section 5, Township 15 North, Range 3 East in Wayne Township, Marion County, Indiana, described as follows:

Commencing at the Southeast corner of the Northwest Quarter of Section 5, Township 15 North, Range 3 East; thence North 00 degrees 24 minutes 46 seconds East (assumed) 232.306 meters

(762.16 feet) along the East line of said Quarter Section to the Point of Beginning; thence South 88 degrees 17 minutes 52 seconds West 10.496 meters (34.44 feet); thence North 60 degrees 18 minutes 32 seconds East 8.184 meters (26.85 feet); thence North 88 degrees 46 minutes 59 Seconds East 3.409 meters (11.19 feet) to the East line of said Quarter Section; thence South 00 degrees 24 minutes 46 seconds West 3.815 meters (12.52 feet) along the East line of said Quarter Section to the Point of Beginning.

## LEGAL DESCRIPTION FOR MICHIGAN PLAZA

### Marion County, Indiana

A part of Lot 8 in Zadok Tomlinson Estate Partition of the South Half of the Northwest Quarter of Section 5, Township 15 North, Range 3 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows, to-wit:

Commencing at the Southeast corner of said Northwest Quarter; thence North 01 degrees 53 minutes 21 seconds East on and along the East line of said Quarter Section 735.11 feet to the centerline of Michigan Street as described by previous deed; thence North 90 degrees 00 minutes 00 seconds West 235.88 feet to the point of beginning of this description; thence South 2 degrees 01 minutes 47 seconds West 368.16 feet; thence South 89 degrees 51 minutes 30 seconds West 181.94 feet; thence North 1 degree 53 minutes 21 seconds East parallel to the East line of said Quarter Section 368.58 feet to the center line of Michigan Street as described by previous deed; thence South 90 degrees 00 minutes 00 seconds East 182.82 feet to the point of beginning.

*[The remainder of this page intentionally left blank]*